

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KARENA SMITH,

Plaintiff,

- against -

LVNV FUNDING, L.L.C.

Defendant.

Civil Action No. 1:11-cv-6325

**DEFENDANT LVNV FUNDING, L.L.C.'S
ANSWER AND AFFIRMATIVE DEFENSES**

NOW COMES defendant, LVNV Funding, L.L.C. ("LVNV"), by and through undersigned counsel, and for its Answer to Plaintiff's Complaint, states as follows:

INTRODUCTION

1. LVNV admits that Plaintiff purports to bring an action for damages under the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* ("FDCPA"), but denies any and all damages, liability, and/or violations, to the extent alleged in ¶ 1.

JURISDICTION & VENUE

2. LVNV admits the allegations in ¶ 2 for jurisdiction purposes only.
3. LVNV admits the allegations in ¶ 3 for venue purposes only.

PARTIES

4. LVNV denies the allegations in ¶ 4 for lack of knowledge or information sufficient to form a belief therein, which has the effect of a denial.

5. LVNV admits only that it is a limited liability company and that when it operates as a debt collector as defined by 15 U.S.C. § 1692(a)(6), that certain of its activities may be regulated by the FDCPA. Except as specifically admitted, LVNV denies the allegations in ¶ 5.

6. LVNV denies the allegations in ¶ 6 for lack of knowledge or information sufficient to form a belief therein, which has the effect of a denial.

7. Paragraph 7 makes no allegations against LVNV to which an Answer is required of LVNV. To the extent an answer is required, LVNV denies the allegations in ¶ 7.

FACTUAL ALLEGATIONS

8. LVNV admits the allegations in ¶ 8 upon information and belief.

9. LVNV denies the allegations in ¶ 9 for lack of knowledge or information sufficient to form a belief therein, which has the effect of a denial.

10. LVNV admits only that it acquired two separate accounts that Plaintiff had with the original creditor, Sterling Jewelers, and filed an action with respect to one of the accounts as alleged in ¶ 10.

11. LVNV admits only that it filed an action as referenced in ¶ 11 with respect to a second account it acquired relative to a debt Plaintiff had with Sterling Jewelers.

12. LVNV denies the allegations in ¶ 12.

13. LVNV denies the allegations in ¶ 13 for lack of knowledge or information sufficient to form a belief therein, which has the effect of a denial.

14. LVNV denies the allegations in ¶ 14.

CAUSE OF ACTION

15. LVNV denies the allegations in ¶ 15.

16. LVNV denies the allegations in ¶ 16.

17. LVNV denies the allegations in ¶ 17.

18. LVNV denies the allegations in ¶ 18.

AND NOW, in further Answer to the Complaint, Defendant LVNV avers as follows:

FIRST AFFIRMATIVE DEFENSE

One or more of the counts/grounds in plaintiff's Complaint fails to state a claim against LVNV upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Pursuant to 15 U.S.C. § 1692k(c), to the extent a violation(s) is established, any such violation(s) was not intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

THIRD AFFIRMATIVE DEFENSE

Any harm suffered by plaintiff was legally and proximately caused by persons, individuals, corporations, or entities beyond the control or supervision of LVNV, or for whom LVNV is not responsible or liable.

FOURTH AFFIRMATIVE DEFENSE

Assuming that plaintiff suffered any damages, plaintiff has failed to mitigate her damages or take other reasonable steps to avoid or reduce her damages.

FIFTH AFFIRMATIVE DEFENSE

One or more claims asserted by Plaintiff are barred by the statute of limitations, laches, estoppel, waiver and/or unclean hands.

WHEREFORE, Defendant LVNV requests the Court dismiss this action with prejudice and grant it all further and necessary relief the Court deems appropriate.

Dated: September 12, 2010

Respectfully Submitted,

/s Michael Del Valle
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Counsel for LVNV Funding, L.L.C.

CERTIFICATE OF SERVICE

I certify that on this 12th day of September 2011, a copy of **Defendant L.NV Funding, L.L.C.'s Answer and Affirmative Defenses** was filed electronically in the ECF system. Notice of this filing will be sent to the parties of record by operation of the Court's electronic filing system, including plaintiffs' counsel as described below. Parties may access this filing through the Court's system.

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/s Michael Del Valle
Michael Del Valle, Attorney